
EXHIBIT A

07 FHL 136 New

From: "Brian Christensen" <bchrist@email.fleming.com>
To: <teresan@fleming-logistics.com>
Sent: Friday, May 09, 2003 11:51 AM
Attach: Re_ Fleming - Berry freight software.eml
Subject: Fwd: Re: Fleming - Berry freight software

FYI

Mark, Did we do the attached or reinstall the original?

07 FHL 136 New

From: <damian_capozzola@la.kirkland.com>
To: <peter_spingola@chicago.kirkland.com>
Cc: <lex@gte.net>; <bchrist@email.fleming.com>; <cbirche@email.fleming.com>;
<rkapmfner@whitecase.com>
Sent: Friday, May 09, 2003 11:18 AM
Subject: Re: Fleming - Berry freight software

I don't believe they've ever sent a formal notice in writing, but I believe their theory is that we are continuing to infringe regardless of our efforts to scale back to the original license. In other words, as I understand it, building up from the original license and then trying to tear off the modifications does not result in the original, it results in a derivative which looks like the original, which is itself an infringement. They are definitely threatening to bring additional actions in whatever forum will hear them. I wouldn't be surprised if they filed something today or Monday, which highlights the need for us to work quickly. I'll try to circulate something over the weekend.

--Damian

Peter Spingola
05/09/2003 02:15 PM

To: Damian Capozzola/Los Angeles/Kirkland-Ellis@K&E
cc:

Subject: Fleming - Berry freight software

Just had a few follow up points. Do you know if there has been a notice to terminate or a notice of breach served by Berry/Hogan for our current use? My guess is no, but I'm trying to think of any possible scenarios in which Fleming could be currently infringing the license agreement, even though it is no longer using the infringing modifications. Could Berry/Hogan potentially bring another action for any such infringement?